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No. 538

In the Supreme Court of the United States

OCTOBER TERM, 1932

BOARD OF TRUSTEES OF THE UNIVERSITY OF ILLINOIS, PETITIONER

v.

THE UNITED STATES

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CUSTOMS AND PATENT APPEALS AND BRIEF IN SUPPORT THEREOF

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PETITION

The Attorney General of the State of Illinois and the University Counsel, in behalf of the Board of Trustees of the University of Illinois, pray that a writ of certiorari issue to review the judgment of the Court of Customs and Patent Appeals entered in the above case on June 20, 1932, and made final by the denial of a petition for a rehearing on October 10, 1932 (R. 150), affirming the decision of the Customs Court (R. 87).

QUESTIONS PRESENTED

1. Whether, under the Tariff Act of September 21, 1922, C. 356, Title I, Sec. 1, 42 Stat. 858, and partic-

ularly paragraphs 218, 228, 360, and 372 thereof, the United States may compel the Board of Trustees of the University of Illinois to pay an ad valorem customs duty upon scientific instruments, to be used exclusively by the University of Illinois in imparting instruction, as a prerequisite to the right to bring such articles into the country, which equipment the University has purchased, and to which it has acquired full legal title abroad, because equipment of the type required was not obtainable in the United States.

Subordinate questions, implicit in the foregoing and discussed in the Court of Customs and Patent Appeals, are:

(a) Is conducting a state educational institution of the type of the University of Illinois, a strictly governmental function; and

(b) Is the body corporate, known as the Board of Trustees of the University of Illinois, a strictly public or governmental agency of the State of Illinois; and

(c) Is the customs duty or tax such a direct and substantial burden as to come within the prohibition of the doctrine that the federal government is without power directly to burden or embarrass the states or their governmental agencies when engaged in the performance of strictly governmental functions?

Statutes Involved

The statutes involved are set forth in the Appendix, pp. 25-28 infra.

Statement

By the Illinois Enabling Act a percentage of the proceeds of the sale of certain public lands, after January, 1819, was offered to the future State of Illinois and reserved for appropriation by the Legislature "for the encouragement of learning, of which one-sixth part shall be exclusively bestowed on a college or university." Act of April 18, 1818, Sec. 6, par. 5, 3 U. S. Statutes at Large 428, Appendix, p. 25 infra. By Ordinance of Illinois, Accepting Enabling Act, this offer was accepted. Laws of Illinois, 1819, First Session, App. p. 21, Appendix, pp. 25-26 infra. The Legislature of Illinois, by a public act approved February 28, 1867, created the petitioner a body corporate for the purpose of operating a state university. Laws of Illinois, 1867, p. 123, R. 15, 17, Appendix, pp. 26-27 infra. The institution was founded for the purpose of furnishing instruction in Liberal Arts, Agriculture, Engineering and Military Science; no tuition is charged (R. 65); certain service charges (R. 65) are collected, but the Government conceded that student fees "do not in any substantial degree support the University" (R. 48); the University is sup-

ported mainly by general property taxes levied upon the people of the entire State of Illinois (R. 13, 64, 67), and partly from appropriations of funds and of lands from the United States Government, and from Congress (R. 6, 64), and in part by the service charges aforesaid. All property, title to which is in the University and which is not held in trust under private arrangements, belongs to the State of Illinois (R. 63) and is listed by the State Auditor as "State Property" (R. 12).

On April 8, 1927, the Petitioner purchased in and imported from Germany a quantity of chemical glassware against which the Collector of Customs at the Port of Chicago assessed a 65% ad valorem duty (R. 32-33); in July, 1927, the Petitioner imported an electrical machine and parts on which the Collector collected a 30% ad valorem duty (R. 35-36); on June 2, 1927, the Petitioner imported an optical instrument on which the Collector collected an ad valorem duty of 45% (R. 37-38); and on April 23, 1928, the Petitioner imported scientific apparatus on which the Collector collected an ad valorem duty of 40% (R. 40-41). These customs taxes were paid by money drawn from the state treasury and appropriated to the Petitioner by the Legislature of Illinois (R. 47-50E, 73); the equipment upon which the tax was paid and collected was for the exclusive use of the University in imparting instruction (R. 75-76).

There was no controversy on the facts in the lower courts. Scientific instruments when imported by state universities were generally admitted free under Tariff Acts prior to that of 1922.

These exactions were all protested by the Petitioner and the merchandise was received by it. The protests were heard together before the Customs Court in Chicago, June 25, 1929, and the testimony offered was, by agreement, rendered applicable to all four (R. 43). On March 30, 1931, the Customs Court, speaking through two members, rendered a decision against the Petitioner, overruling all the protests, in which two opinions were written (59 T. D. 747, R. 87 ff.). An appeal was duly prosecuted to the Court of Customs and Patent Appeals where a decision, two justices dissenting, became final, on denial of a petition for a rehearing, on October 10, 1932, affirming the decision of the Customs Court (61 T. D., No. 26, p. 68, R. 98). On October 17, 1932, mandate was stayed by order of the Presiding Judge.

Specifications of Errors to Be Urged

1. The Court of Customs and Patent Appeals erred in holding that the ad valorem duties collected from the Petitioner upon scientific equipment, which was purchased abroad because not obtainable in the home market, were properly collectible and did not constitute

a prohibited burden upon, or an illegal tax on, property of the State of Illinois used by the latter in performing a strictly governmental function.

2. The Court of Customs and Patent Appeals erred in affirming the decision of the Customs Court.

Reasons for Granting the Writ

1. (a) The issue is of unusual and wide public importance; and it involves an important question of federal law. It concerns directly every major state university, and indirectly every state-owned and operated educational and charitable institution in the United States, and their freedom to obtain abroad scientific equipment of the highest order, without being taxed by the United States on every such purchase. The extent of this interest is, in part, evidenced by the fact that the Attorneys General of several important states joined in the argument below and now urge that a writ of certiorari be granted by the Supreme Court.

(b) The importance of this case is unequivocally attested by the author of the prevailing opinion in the Court of Customs and Patent Appeals. He says:

> "The question is one of vast importance and merits and has received the most careful consideration by counsel and the court." (R. 101.)

The dissenting judges say that,

> "The case is of such importance that we feel

constrained to express our views at length * * * * *"
(Rec. 118.)

2. The precise point involved has not, it is believed, been expressly decided by the Supreme Court, nor has it been decided by any state or federal court other than the Customs Court and the Court of Customs and Patent Appeals. This is presumably because the imposition of such a duty is a comparatively recent innovation (1922). It is, therefore, not possible to suggest a conflict in the decisions of lower tribunals, except that five opinions have been written against the contention of the Petitioner, but no two go upon the same grounds. Substantially, the only judicial unanimity disclosed in the record is in the conclusion that the Petitioner's protests must be overruled. A strong dissent, in which two members concurred, was filed in the Court of Customs and Patent Appeals. It seems probable that no sound ground of decision has been stated in any opinion overruling the Petitioner's protest.

3. The question is bound to recur again and again until resolved by the highest court in the land; the error, believed to constitute the groundwork of the conclusion of the lower court, is one which is prejudicial, both financially and otherwise, to the Petitioner and to state owned and operated educational and charitable institutions generally. There is involved directly the power of the Federal Government to collect annually

large sums, in the form of a customs tax, from the States.

4. We think the prevailing opinions in the Court of Customs and Patent Appeals misapplied and misconstrued the scope and effect of various decisions of this Court, notably Collector v. Day, 11 Wall. 113; Brown v. Maryland, 12 Wheat. 419, 436, 439; South Carolina v. United States, 199 U. S. 437; Hammer v. Dagenhart, 247 U. S. 251; Hampton & Co. v. United States, 276 U. S. 394; Brolan v. United States, 236 U. S. 216, and failed to appreciate the applicability of Adair v. United States, 208 U. S. 161, 180, and the distinction recognized by this Court between the power to levy specific charges under the commerce clause in aid of effective regulation of commerce, and the power to tax, for revenue purposes, in a strict and constitutional sense. The court failed to appreciate the essential difference between the primary purpose of an act of Congress in the constitutional sense, and the economic incidents resulting from the enforcement which may operate as regulations of commerce. It seems that the lower court confused separate powers—that over commerce and the taxing power—in such a manner as to obliterate the distinction between them, with the result that the conclusion reached is fallacious.

6. The decision seems to be in irreconcilable conflict with the reasoning of this Court in South Carolina v.

United States, supra. This Court there held the limitation stated in Collector v. Day, supra, inapplicable save in situations where strictly governmental functions were involved. Obviously this Court could not reason, as it did, that the argument against the power to levy the excise tax there challenged would lead to the conclusion that a State might import free of duty, except on the theory that the implied prohibition against federal burdens on state governmental agencies applied with like force to the exertion of the power to levy customs duties as to the exercise of the power to levy excise taxes; and if the duty could be sustained under the commerce clause, as held below, plainly this Court could not say, as Justice Brewer did, that "the same argument" would exempt importations by the State from duty, as, it was claimed, exempted the sale of liquor by the State from a license tax.

WHEREFORE, It Is Respectfully Submitted that the petition should be granted.

November, 1932.

OSCAR E. CARLSTROM,
Attorney General of Illinois.

SVEINBJORN JOHNSON,
Counsel for the Board of Trustees of the University of Illinois.

I am authorized by letters from the following Attorneys General to say that they join in this Petition for Certiorari, and, inasmuch as limitations of time preclude

the circulation of the original copy of the Petition for the personal signature of each official, I have accordingly affixed their names. While the theory of the case, both in this court and below, and the legal propositions advanced are well known to these officials, responsibility for the contents of the Petition and the Brief and for the form of statement is that of the undersigned.

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BRIEF IN SUPPORT OF THE PETITION

Opinions Below

The opinions of the Customs Court (R. 87, 95) are reported in 59 T. D. 747. The opinions of the Court of Customs and Patent Appeals (R. 98, 118) are reported in 61 T. D., No. 26, p. 68.

Jurisdiction

The judgment of the Court of Customs and Patent Appeals became final through denial of a petition for rehearing on October 10, 1932, (R. 150); and mandate was stayed by order of the Presiding Judge on October 17, 1932, (R. 150). Jurisdiction is conferred on this Court by Section 195 of the Judicial Code, as amended by Act of June 17, 1930, C. 497, Title IV, Sec. 647, 46 Stat. 762 (Sec. 308, Title 28, U. S. C. A.), and Section 8, Act of February 13, 1925, C. 229, par. 8, 43 Stat. 940 (Section 350, Title 28, U. S. C. A.)

Question Presented, Statutes Involved, Etc.

The statement of the question presented, specification of errors to be urged, and a statement of the case appear in the petition. The statutes involved are printed in the Appendix, pp. 25-28 infra.

The Facts

The facts are stated in the petition, pp. 3-5. We emphasize that the importer is a creature of the legislature of the State, created for the sole purpose of operating a university; that the customs tax challenged was paid out of the general revenues of the State of Illinois; that the equipment was not obtainable in the home market; and that prior to the Tariff Act of 1922 scientific instruments, when imported by colleges and universities, came in duty free.

Argument

Conflict in Grounds of Decisions Below. Of the five opinions written overruling the Petitioner's Protest, no two proceed upon the same theory. When the question here presented was first before the Customs Court (54 T. D. 319) the opinion went upon the broad ground that the State of Illinois, in maintaining and conducting the University, was engaged in a proprietary activity and that, therefore, South Carolina v. United States, 199 U. S. 437, was conclusive authority upholding the power to levy and collect the customs tax. When the present case was before the Customs Court the author of the earlier opinion abandoned that theory and put his holding on the ground that the evidence did not show that the tax would "destroy the institution." Judge Cline concurred in the result, but adhered to the doctrine of the earlier case.

Presiding Judge Graham of the Court of Customs

and Patent Appeals, with whom agreed Judge Hatfield, seems to reject both grounds on which the Customs Court based its holding against the importer, and thinks that the customs duty may be sustained under either the power to tax or the power to regulate foreign commerce, or, perhaps, both in conjunction, arguing that the prohibition against burdening state governmental instrumentalities by federal taxes has no application within "a field entirely within the control of the national government." And Judge Bland seems not fully satisfied with the reasoning of his colleague or with that of any opinion of the Customs Court, but rests his conclusion on the sweeping and unsupportable generalization that the position of the Petitioner, if sustained, would be "wholly * * * destructive of other rights granted to the Federal Government." (R. 117-118.)

Petitioner is aware that it is the conclusion, not the reasoning, of the lower court with which this Court is concerned. It is respectfully submitted, however, that a conclusion in support of which such divers and contradictory reasons have been judicially advanced cannot be accepted as furnishing dependable guidance to the States in the future, and is, indeed, probably incorrect if the reasons assigned are untenable. We believe that both the holding and the supporting reasons are unsound and result from the misapplication of fundamental principles laid down by this Court in early and in recent cases.

Petitioner's Contention. The question presented is narrow. The Petitioner contends that the United States is without power to compel it to pay an ad valorem customs duty upon scientific instruments imported by it for use exclusively in connection with the operation of the state university, on the theory that the Petitioner is solely a governmental agency of and created by the State of Illinois and is engaged in performing a strictly governmental function.

Contention of the United States. The United States asserts that the source of this power may be found either in Art. 1, Sec. 8, Par. 3, of the Constitution of the United States, the clause giving Congress power to regulate foreign commerce, or in Art. 1, Sec. 8, Par. 1 thereof, which gives Congress the power to levy customs duties for revenue purposes.

Questions Not Presented. In view of the position taken by the United States in the lower court and the reasoning of the prevailing opinions against the Petitioner, we deem it advisable to point out specifically certain legal questions not directly or indirectly involved. The extent of the power of Congress under the commerce clause to exclude harmless articles from foreign commerce, or to enact regulatory measures relating to standards of quality governing the admission of articles, or otherwise to regulate the foreign trade by requiring

certain labels, descriptions, and conformity with defined formulas, binding alike upon all importers, whether sovereign states, acting in governmental or proprietary capacities, or private persons, is not properly in this case. The articles imported by the Petitioner are recognized as legitimate articles of foreign commerce; no regulatory measure concerning them has been adopted by Congress; and no condition upon their admission has been imposed save the payment of an ad valorem duty, that is, a tax for revenue purposes. The reliance placed on and the inferences drawn from the general language concerning the power of Congress to exclude articles from foreign commerce, used by this Court in The Abby Dodge, 223 U. S. 166 (regulations relating to the landing of sponges), in Buttfield v. Stranahan, 192 U. S. 470 (the importation of unwholesome tea), and in Brolan v. United States, 236 U. S. 216 (importation of opium), aside from the unwarranted disassociation of the general language from the particular facts, indicate a serious misunderstanding of the real question before the lower court, and a consequent misapplication of the doctrines of these cases.

No Power to Tax States or Their Governmental Agencies. There is no power in the national government to tax or impose direct burdens upon or embarrass such instrumentalities of the States as are used in the performance of strictly governmental functions. Col-

lector v. Day, 11 Wall. 113, 124; South Carolina v. United States, supra; and recently in Burnet v. Coronado Oil and Gas Co., 285 U. S. 393. The prohibition is implied, is reciprocal, and, as to the nation,

> "the immunity is derived from the Constitution in the same sense and upon the same principle that it would be if expressed in so many words."

Clallam County v. United States and United States Spruce Corporation, 263 U. S. 341, 344; and as said in Collector v. Day, supra, at page 124,

> "The general government * * * in its appropriate sphere is supreme; but the States, within the limits of their powers not granted, or, in the language of the Tenth Amendment, 'reserved,' are as independent of the general government as that government within its sphere is independent of the States."

Petitioner Is a Governmental Agency, and Conducting a University Is a Strictly Governmental Function. Educational bodies, such as state schools and universities, operated by the state and maintained by it, in whole or in part, out of funds raised by general taxation, or by funds which are the absolute property of the state, are agencies of the state government, are public corporations, and are engaged in performing strictly governmental, as distinguished from proprietary, functions. Thomas v. Industrial University, 71 Ill. 310, 312; University of Tennessee v. Peoples Bank, 157 Tenn. 87;

Sappington v. Commissioner of Internal Revenue, 25 B. T. A. 1385; Burnet v. Coronado Oil and Gas Co., supra.

The Customs Duty Is a Tax. The customs duty is "a tax on the article which is paid by the consumer." Brown v. Maryland, 12 Wheat. 419, 436, 439, per Marshall, C. J.; Hampton & Co. v. United States, 276 U. S. 394, 411, 412.

Primary Purpose of Tariff Act Is Revenue. The Court of Customs and Patent Appeals does not seem to have had a sound grasp of the true meaning of the concept, "primary purpose of an act of Congress,"—that it refers to the purpose of an act constitutionally considered. The motives and intent of Congress and the practical effect of enforcement of the law may be one thing, while the purpose, constitutionally considered, may be something else. The latter determines the fundamental nature of the law, notwithstanding the understood and intended economic incidents thereof may completely overshadow its primary—constitutional—purpose. That the primary purpose of tariff acts has, since the foundation of the Nation, been assumed to be revenue rather than regulation of commerce, is, in part, evidenced by the fact that tariff legislation has always designedly originated in the House of Representatives. Art. 1, Sec. 7, Par. 1. The intent of Congress in ar-

ranging the schedules of customs duties may have been to encourage—to regulate—certain industries within certain states, a purpose, which, if primary and "shown on the face of the act" (Drexel Furniture Co. v. Bailey, 259 U. S. 20, 43) would have been beyond the power of Congress; nevertheless, the act is constitutional because the primary purpose—in the constitutional sense—is revenue, although the desired and undisclosed economic results lie within a field beyond the power of Congress to enter. This precisely is the rationale of Hampton & Co. v. United States, supra. This principle has been so often enounced and applied by this Court that even a bare statement should, if made, be made with apologies, but for the fact that it seems to have been completely misunderstood and misapplied in the Court of Customs and Patent Appeals. The principle is illustrated in McCray v. United States, 195 U. S. 27; Knowlton v. Moore, 178 U. S. 41; Veazie Bank v. Fenno, 8 Wall. 533; United States v. Doremus, 249 U. S. 86; Hammer v. Dagenhart, 247 U. S. 251; and Drexel Furniture Co. v. Bailey, supra.

Power over Commerce Subject to Constitutional Restrictions. It has been settled law since Gibbons v. Ogden, 9 Wheat. 1, 22 U. S. 1, that

> "the power over commerce * * * is vested in Congress as absolutely as it would be in a single government having in its Constitution the same

> *restrictions* on the exercise of power as are found in the Constitution of the United States." (Emphasis ours.)

It is as complete—as paramount—as, but no more so than, the congressional power to tax. Drexel Furniture Co. v. Bailey, supra, 39. It is, therefore, not an absolute or arbitrary power. One of these "restrictions" is that no power shall be so exerted by Congress as directly and substantially to burden or embarrass the States in the exercise of strictly governmental activities. That this limitation applies to interstate commerce was specifically held in Adair v. United States, 208 U. S. 161, 180, the Court saying:

> "We need scarcely repeat what this court has more than once said, that the power to regulate interstate commerce, great and paramount as that power is, cannot be exerted in violation of any fundamental right secured by other provisions of the Constitution. *Gibbons* v. *Ogden*, 9 Wheat. 1, 196; *Lottery Case*, 188 U. S. 321, 353."

This great tribunal, even when speaking of a power so vital to the very existence of the Nation as is that of taxation, has always spoken with tender regard for certain fundamental rights of individuals and States. It has made it plain that there is little room for the concept of arbitrary power in our constitutional scheme. In Veazie Bank v. Fenno, supra, 541, the court said:

> "There are, indeed, certain virtual limitations,

> arising from the principles of the Constitution itself. It would undoubtedly be an abuse of the power if so exercised as to impair the separate existence and independent self-government of the States, or if exercised for ends inconsistent with the limited grants of power in the Constitution."

It is elementary, but overlooked by the lower court, that this principle is controlling with respect to all grants of power.

The Government and the lower court failed to apply or appreciate these principles and attributed to the commerce clause a primacy in excess of the limits laid down by this court. The lower court seems to have regarded Art. 1, Sec. 8, Par. 3, of the Constitution as a sort of residuary clause, supplying some, if not all, deficiencies of power suggested by limitations, express and implied, found in other parts of the instrument.

South Carolina v. United States. The Supreme Court, in this case, adopted the distinction between proprietary and governmental powers, as exercised by public corporations, and held, in effect, that a State should, for certain purposes, be regarded as a public corporation and within the rule. The earliest clear and concise statement of the doctrine in the United States appears in Lloyd v. City of New York, 5 N. Y. 369, 374 (1851) where it is said that a public corporation possesses two kinds of powers:

> " * * * one governmental and public, and to the extent they are held and exercised, is clothed with sovereignty—the other private, and to the extent they are held and exercised, is a legal individual."

In the South Carolina case the court, accordingly, held that when the state went into the liquor business it became a legal individual and that when the United States undertook to tax that "private business," the prohibition, against burdening or taxing state governmental agencies stated in Collector v. Day, and other cases, supra, had no application.

The prevailing opinions below show that the reasoning in this important case was overlooked, misapplied, and misunderstood. It is assumed by the lower court that the Petitioner is a governmental agency and that conducting a university is a strictly governmental function, but it is held that the limitation on congressional power defined in Collector v. Day is inapplicable because the power over commerce is exclusive and the rule is said not to govern in a field "common to both" State and Nation, such as the field of taxation, and the like.

The doctrine as thus applied is novel in our constitutional law, and the reasoning of Justice Brewer obviously escaped the attention of the majority members of the lower court. The learned Justice said:

> "The same argument which would exempt the sale by a State of liquor, tobacco, etc., from a

> license tax would exempt the importation of merchandise by a State from import duty."

The point of the observation was that if the contention of South Carolina were sustained the State, by going into "private business," could dry up the sources of national income and destroy the Federal Government. Obviously this court could not say that the "same argument" would lead to the conclusion indicated by Justice Brewer, except for the fact that the implied prohibition against federal burdens on state governmental agencies applied with like force to the exertion of the power to levy customs duties as to the exercise of the power to levy excise taxes; and if a customs duty could be sustained under the commerce clause, as the majority opinion below seems to hold, plainly Justice Brewer and this court could not say that "the same argument" would exempt the importation from duty, as, it was claimed, exempted the sale of liquor from the license tax. The implied prohibition, then, contrary to the conclusion of the lower court, applies equally in the field of, so-called, exclusive powers, such as commerce, and in fields "common to both" State and Nation, such as taxation.

The "Police Power" Cases. The lower court misapplied the decisions of this court in Buttfield v. Stranahan, supra; The Abby Dodge, supra; Brolan v. United States, supra, and other analogous cases, where a prohibition of importation, total or partial, or save on stated

conditions, was considered. The lower court concluded that the power over foreign commerce, under the commerce clause, was plenary and absolute, overlooking the fact that in all such cases it was the character of the particular subjects dealt with which imparted to the prohibition the quality of regulation under the commerce clause. In Hammer v. Dagenhart, supra, this court said at page 270:

> "But it is insisted that adjudged cases in this court establish the doctrine that the power to regulate given to Congress incidentally includes the authority to prohibit the movement of ordinary commodities and therefore that the subject is not open for discussion. The cases demonstrate the contrary. They rest upon the character of the particular subjects dealt with and the fact that the scope of governmental authority, state or national, possessed over them is such that the authority to prohibit is as to them but the exertion of the power to regulate."

Moreover, the question is not necessarily in this case, The writer of this brief knows of no case where this court has held that, whereas Congress has no power to exclude harmless commodities from interstate commerce, it may, *under the commerce clause*, exclude them from foreign commerce. Other powers, such as the war power, the treaty making power, etc., may and do authorize more extensive regulation of foreign than interstate commerce—an embargo is one such illustration—

but no such attempted regulation appears or is challenged in this case.

Conclusion

The question involves the constitutional power of the National Government to collect an ad valorem duty from the States upon state owned property to be used in the performance of strictly governmental functions, and is of great importance not only to the State of Illinois, but to all the States. We respectfully submit that the petition should be granted.

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Attorney General of Illinois.

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Counsel for the Board of Trustees of the University of Illinois.

APPENDIX

Act of Congress, April 18, 1818, for the Admission of Illinois, 3 U. St. at Large 428:

> §6. *And be it further enacted*, That the following propositions be and the same are hereby, offered to the convention of the said territory of Illinois, when formed, for their free acceptance or rejection, which if accepted by the convention, shall be obligatory upon the United States and the said State.
> * * *
>
> *Third.* That five per cent. of the net proceeds of the lands lying within such State, and which shall be sold by Congress, from and after the first day of January, 1819, after deducting all expenses incident to the same, shall be reserved for the purposes following, viz.: two-fifths to be disbursed, under the direction of Congress, in making roads leading to the State; the residue to be appropriated, by the Legislature of the State, for the encouragement of learning, of which one-sixth part shall be exclusively bestowed on a college or university.
> * * *

Ordinance of Illinois, Accepting Enabling Act. Laws of Illinois, 1819. App., p. 21.

> Whereas, the Congress of the United States, in the Act entitled "An Act to enable the people of the Illinois Territory to form a Constitution and State government, and for the admission of such State into the Union on an equal footing with the original States," passed the 18th of April, 1818, have offered

to this convention for their free acceptance or rejection, the following propositions, which, if accepted by the convention, are to be obligatory upon the United States, viz.: * * *

3. That five per cent. of the net proceeds of the lands lying within such State, and which shall be sold by Congress from and after the first day of January, 1819, after deducting all expenses incident to the same, shall be reserved for the purposes following, viz.: Two-fifths to be disbursed under the direction of Congress, in making roads leading to the State; the residue to be appropriated by the Legislature of the State for the encouragement of learning, of which one-sixth part shall be exclusively bestowed on a college or university. * * *

Therefore, this convention, on behalf of, and by the authority of the people of the State, do accept of the foregoing propositions; * * *

Act for the Organization of Illinois Industrial University, approved February 28, 1867. Laws of Illinois, 1867, p. 123.

SECTION 1. * * * That it shall be the duty of the governor of this state within ten days from the passage of this act, to appoint five trustees, resident in each of the judicial grand divisions of this state, who, together with one additional trustee, resident in each of the congressional districts of this state, to be appointed in like manner, with their associates and successors, shall be a body corporate and politic, to be styled "The Board of Trustees of the Illinois Industrial University"; and by that name and style shall have perpetual succession, have power to contract and be contracted with, to

sue and be sued, to plead and be impleaded, to acquire, hold and convey real and personal property; to have and use a common seal, and to alter the same at pleasure; to make and establish by-laws, and to alter or repeal the same as they shall deem necessary, for the management or government, in all of its various departments and relations, of the Illinois Industrial University, for the organization and endowment of which provision is made by this act. Said appointments to be subject to approval or rejection by the Senate at its next regular session thereafter, and the appointees to be and they are hereby authorized to act as trustees as aforesaid, until their successors shall be appointed by the governor and such appointment shall be approved by the senate.[1] * * *

§19. This act shall be a public act and take effect and be in force from and after its passage.

Act of Congress, September 21, 1922 (Tariff Act of 1922), C. 356, Title I, Sec. 1, 42 Stat. 858.

An Act to provide revenue, to regulate commerce with foreign countries, to encourage the industries of the United States, and for other purposes * * *

SECTION 1. * * * Except as otherwise specially provided for in this chapter, there shall be levied, collected, and paid upon all articles when imported from any foreign country into the United States or into any of its possessions (except the Philippine Islands, the Virgin Islands, and the islands of

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[1]Nine trustees now (R. 26) and the name has been changed to University of Illinois (R. 30-31). The Governor and the State Superintendent of Public Instruction are ex officio members. All members are now elected (R. 7, 63).

Guam and Tutuila) the rates of duty which are prescribed by the schedules and paragraphs of the dutiable list of this title, namely; * * * [1]

Par. 218. Biological, chemical, metallurgical, pharmaceutical, and surgical articles and utensils of all kinds, including all scientific articles, utensils, tubing and rods, whether used for experimental purposes in hospitals, laboratories, schools or universities, colleges, or otherwise, all of the foregoing, finished or unfinished, composed wholly or in chief value of glass or paste, or a combination of glass and paste, 65 per centum ad valorem; * * *

Par. 228. Azimuth mirrors, sextants, and octants; photographic and projection lenses, opera and field glasses, telescopes, microscopes, and other optical instruments, and frames and mountings for the same; all the foregoing not specially provided for, 45 per centum ad valorem. * * *

Par. 360. Philosophical, scientific, and laboratory instruments, * * * and parts thereof, * * * 40 per centum ad valorem: * * *

Par. 372. * * * all other machines or parts thereof, finished or unfinished, not specially provided for, 30 per centum ad valorem; * * *

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[1]Repealed by Act of June 17, 1930, Chap. 497, Title IV, Sec. 651 (a) (1), 46 Stat. 762, 71st Congress.